IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 726 OF 1992

The State of Maharashtra
through M.M. Acharya,
age 33 years, Food Inspector,
Food & Drug Admn. 480 Gaike
Sadan, Nashik 2. ...Appellant.

V/s

Shri Rupchand Ghewarchand Rake,
age 37 years, Prop. M/s. Pachitrao
Flour Mill, situated at Main Road,
Ghoti Bazar, Ghoti, Tal. Igatpuri,
Dist. Nashik. ...Respondent.

Mr. A.S. Shitole, APP for the State.

Mr. P.N. Joshi, advocate for the respondent.

CORAM: V.M.KANADE,J.
DATE: 10th February, 2005

ORAL JUDGMENT:

1. The State has preferred this appeal against the Judgment and Order passed by the Judicial Magistrate, First Class, Igatpuri, Nashik. By the said Judgment and Order dated 11/8/1992, the Trial Court acquitted the accused of the offence punishable under the provisions of the Prevention of Food Adulteration Act.

2. Prosecution case is that the Food Inspector visited shop of the respondent and collected samples of Niger seed oil which was manufactured and kept for sale by the accused. After the procedure prescribed under the Act was followed and sanction to prosecute

was granted by the Competent Authority, a complaint was filed in the Court of Judicial Magistrate, First Class. The Trial Court, however, acquitted the accused of the offence for which he was charged.

3. I have heard the learned APP appearing for the State and the learned Counsel appearing on behalf of respondent.

4. The learned APP appearing for the State has taken me through the judgment and order of the Trial Court as also the evidence of the complainant - Food Inspector and the other two witnesses who were examined by the prosecution. The independent witness Bhavrilal Bagmar turned hostile and did not support the prosecution case. From the evidence of the complainant, it can be seen that he has admitted in his evidence that after the sample was taken by him, he did not seal the bottle after the cork was put. Further, from his evidence, it can be seen that an intimation was not given by the Food Inspector to the Local Health Authority that the sample was given to Public Analyst independently.

5. I have also seen the order of sanction which is granted by the sanctioning authority. It has now been

held in catena of cases that the sanctioning authority has to independently apply its mind and has to come to the conclusion that the prosecution of the accused is essential and necessary in public interest. The order dated 30/7/1983 passed by the Joint Commissioner, Bombay Division reveals that there has been no application of mind and no reasons have been given as to why the authority felt that it was necessary to prosecute the accused in public interest. There has been non-compliance of the provisions of section 20 of the Act as also non-compliance of the Rule 14 and Rule 11(c)(i). The Trial Court has given cogent reasons while dismissing the complaint filed by the Food Inspector. I do not see any reason to interfere with the said judgment and order of the Trial Court. The appeal is accordingly dismissed.

V.M. KANADE, J.